

REMARKS

Applicants submit that Meister et al. is not concerned with methods specifically rendering the *Lactobacillus* bacteria non-viable and incapable of inducing substantial fermentation, let alone comprising the step of pasteurization. As a matter of fact, the reverse is true, Meister et al. is concerned with optimizing survival of micro-organisms during drying.

The Office disagreed on the ground that Meister et al. disclose a process and resulting food product which yields at least 1% survival of the micro-organisms after drying.

Based on the passage in col. 5, lines 55-61, the Office states that "this amounts to a mere 1% of viable bacteria presenting the composition, which also means that 99% are non-viable," and speculates that this reads upon the specification-defined term of non-viable *Lactobacillus* bacteria where "substantially all or all bacteria are incapable of growing under appropriate growing conditions of said *Lactobacillus* strain."

In present claim 24, it is specified that "no substantial fermentation of the food product by said *Lactobacillus* bacteria will take place by said non-viable bacteria," and on page 6, lines 4-10, this is further explained by stating that "no substantial fermentation can for example be evidenced by the substantial absence of post-acidification, which is said to occur when the pH is lowered by at least 0.1 pH unit."

Meister et al. teach that the 1% survival is totally acceptable, since the liquid mixture which is subjected to the spray-drying initially contained more than 10^8 cfu/g, such that after drying, more than 10^6 cfu/g are still active and alive.

What is actually meant by "totally acceptable" becomes evident when the document is studied in more detail. In the passage in column 1, lines 38-40, it is mentioned (in relation to the prior art discussion) that "the spray-drying temperature is thus one of the factors limiting the viability of the micro-organisms traditionally used in the fermentation of food product." Moreover, in the passage in column 6, lines 23-26, it is stated that the powder obtained "may be preserved at refrigeration or freezing temperatures before being used as inoculum for the fermentation of food, cosmetic or pharmaceutical products."

In other words, Meister et al. teach the skilled person that survival of at least 1% is acceptable in some cases only, i.e. wherein the resulting mixture (i.e. after 99% or less of the bacteria has been rendered non-viable) still contains a certain minimum amount of bacteria, which minimum amount, following from the teachings of Meister et al., in fact renders these compositions suitable for use as an inoculum for fermentation and therefore inherently will give rise to post-acidification, which, as mentioned before, is said to occur when the pH is lowered by at least 0.1 pH unit.

In conclusion, Meister et al. do not describe a single embodiment wherein a composition is prepared that, as a result of pasteurization effectively taking place, actually fulfils the requirement that the bacteria are rendered non-viable and that no substantial fermentation of the obtained food product will occur after addition of said non-viable bacteria to the food product. Thus, the subject matter described in the disclosure of Meister et al. does not anticipate present claim 24. Obviously, the same reasoning applies with respect to the claims depending from claim 24.

Over and above this, Applicants do not at all agree with the Office's apparent suggestion that the term "drying" as applied in Meister et al. would constitute "pasteurization." The term "pasteurization" has a well recognized meaning to a skill

person. The undersigned has been informed that the skilled person most certainly will not regard spray drying as a pasteurization method.

The technical feature that distinguishes the subject matter of claim 24 from that of the disclosure by Meister et al. as summarized here above, is not disclosed or apparent from Froseth et al., such that the combined teachings of both Meister et al. and Froseth et al. could have lead the skilled person to the invention according to claim 24, let alone to that according to any of the claims dependent therefrom.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



Gerard J. McGowan, Jr.
Registration No. 29,412
Attorney for Applicant(s)

GJM/pod
(201) 894-2297